that make wireless service providers unique to their customers.[108] The same could never be said of LATAs, which were designed with the static landline customer in mind.

Cellular providers are no less incented than PCS providers to provide regional calling and nationwide roaming, and have done what they can, under current restrictions, to accomplish these goals. The IS-41 "backbone" networks are a prime example of how the cellular industry has worked together towards seamless nationwide service, and of how facilities in place today are being grossly under-utilized because of outdated restrictions. The networks of the various carriers are being inter-connected with the "backbone" in order to effectuate automatic call delivery and intersystem handoff. However, because of MFJ restrictions, RBOC-affiliated companies cannot even deliver secondary call treatment such as forwarding to a voice mailbox in the event of a busy signal, or informing the caller the line is "busy" or "doesn't answer" to avoid an unnecessary completion. This is just an example of how outdated regulations can impede the development of customer-friendly features.

If this Commission makes the reasoned decision that MTAs are the appropriate geographic area for a local calling scope for all CMRS providers, then there is reason to believe the Department would support such a conclusion to the Court.[109] The Commission has correctly observed that "the public interest would be disserved by a local service territory definition that impedes service offering of mobile carriers ... ."[110]

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[108] See Affidavit of Peter A. Morrison, Generic Wireless Waiver proceeding, at ¶ 7 - 11, and attachments.

[109] Department of Justice Memorandum, Generic Wireless Waiver, at p. 48.

[110] NPRM at p. 66.

4. Alternative Solution to Calling Scopes

SBC agrees that MTAs are the most reasonable service area of the existing service area definitions that exist today if the Commission chooses to define the calling scope arbitrarily. However, an alternative would be for the Commission to oversee an approval process whereby the CMRS providers submit a filing to the Commission depicting what the calling scope should be for that carrier's customers on a market by market basis, based on the CMRS provider's integral knowledge of what its customers within a given area demand, and how those demands can best be served. This would prevent the artificial and arbitrary imposition of a service area that has no relation to local calling patterns or needs.

Within that calling area, customers would all be treated to flat rate pricing. When the customer leaves the area, the call would be handed off to the interexchange carrier of their choice. The areas could vary, depending on customer demand, from a LATA or MSA-wide area to, perhaps, the City of Florida example, that might reasonably encompass all or most of a state. Changes in scope could be made only upon notice to the Commission. This would permit maximum flexibility for the various CMRS providers and would also permit the CMRS provider to tailor its calling scope to the needs of its own customers. CMRS providers would be at parity, for the tailoring of a service area would be pursuant to their individual needs, to attempt to obtain a competitive edge, not to arbitrary regulatory pronouncements.[111] This would also permit the wireless industry to grow and expand according to customer demand, not within regulatory constraints that are destined to become

[111] Indeed, if a wireless provider wanted to provide flat rate pricing for the whole country, and absorb long distance charges in the process, the public will be well served, See Tab 7..

outmoded, as has happened with LATAs.

This process would require some Commission activity at the front-end in processing notice of the calling scopes, and changes to initial calling scopes, but should lessen the amount of time that would otherwise be spent on waivers and enforcement, since the scopes would reflect what the CMRS providers' customers want. This would eliminate or minimize the time consuming and paper intensive waiver process that has clogged the MFJ Court's calendar for ten years.[112] Without the upfront "buy-in" of CMRS providers into the ultimate calling scopes, the Commission could face literally thousands of waiver requests as new entrants come into the wireless arena. By allowing the CMRS providers to play a part in determining their calling scopes on a market by market basis, competition will be the cornerstone for future enforcement.

F. Equal Access Applicability to CMRS Providers

If the Commission determines it must impose equal access due to the legislative mandate, then it must also decide whether this restriction should be applicable to some or all CMRS providers. The Commission has tentatively concluded it should impose equal access on all cellular CMRS providers.[113]

Part of that determination by the Commission was based on its decision that cellular providers have "market power." The Commission is mistaken in this conclusion. Defining market power as " ... maintain[ing] pricing above the competitive levels for a significant

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[112] And this is with only the seven RBOCs, not the entire wireless industry, seeking waivers.

[113] NPRM at paragraph 42-43. (emphasis added)

period of time,"[114] there is no evidence that this has in fact occurred. The presence of market power in the context of this proceeding is of interest only to the extent of possible leverage into the provision of interexchange cellular service. Even AT&T agrees that this is not a likely threat. (See supra, at Section III C.)

Without evidence of the likelihood or presence of the misuse of market power, there is no justification for treating cellular CMRS providers differently, and there is no evidence to support that claim in this instance. Further, if the Commission expresses it is imposing equal access to ensure regulatory parity, how would that be accomplished if some CMRS carriers were equal access obligated while others were not?

Nextel's argument that there is no reason to require uniform treatment of non-cellular wireless providers, including PCS systems and wide area ESMR, for equal access purposes because these carriers do not control a bottleneck, is without merit.[115] As demonstrated, supra, neither do cellular carriers control a bottleneck. Also as pointed out, supra, Section III C., the Chairman of Nextel was more generous when discussing the lack of a bottleneck theory, when he informed the Honorable Ernest F. Hollings that "commercial mobile services are not bottleneck facilities." Cellular is CMRS, just as SMR is CMRS, and neither control a bottleneck. Accordingly, as the Commission observed, there is a compelling parity argument to support imposition of equal access on wide area SMRs as well as broadband PCS providers if such an obligation remains on cellular providers.[116] As to other CMRS providers, it is

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[114] DOJ and FTC Horizontal Merger Guidelines, April 2, 1992, ¶ 0.1.

[115] NPRM at ¶ 45.

[116] NPRM at ¶ 46.

logical to presume if they are competitive for the same pool of customers, then regulatory parity principles would hold that the equal access obligation should be extended to all CMRS providers or no CMRS providers, if at all.[117] As argued herein, SBMS supports no equal access for CMRS providers. However, should the Commission impose equal access, it should be under the following conditions: (1) there should be a sunset provision, (2) non-voice activities such as CDPD and AIN should be excluded, (3) the Commission should designate the largest local calling scope, preferably MTAs, and (4) the Commission should enact procedures to quickly remove equal access obligations from all CMRS providers if it is determined that cellular carriers who are currently obligated no longer must provide equal access. Further, the Commission should support in the judicial and legislative arenas the removal of equal access obligations on all CMRS providers. This is the regulatory parity that makes sense in the competitive wireless marketplace.

[117] However, SBC does not argue that there cannot be logical distinctions among CMRS providers based upon size, the scope of customers being solicited or other grounds that may militate in favor of suspension of these obligations.

G. Equal Access Interconnection

1. Technical Issues

What follows in this Section are arguments related to how equal access should be technically implemented. SBC offers comments to respond to the arguments raised, but these arguments do not alter SBC's firm belief that equal access in a wireless environment is wrong. These technical issues are just a small argument as to why equal access does not make sense in this competitive marketplace.

If the Commission decides equal access imposition is mandatory, SBC is not sympathetic to the complaints from CMRS providers who may now be required to interconnect with interexchange carriers, since SBMS has faced, and overcome, similar problems in each of its markets. It did so, and so can these CMRS providers. That does not mean there will be no expense involved and technical reconfigurations required, but if this Commission determines equal access is appropriate, these complaints can be overcome. No CMRS provider should be able to avoid equal access if it is imposed simply because they would have to make technical alterations in order to comply. There is no impossibility to providing this access, otherwise the RBOC-affiliated cellular carriers would not be operational today. A CMRS provider cannot duck these obligations just by claiming its equipment choices and MTSO locations make the provision of equal access more difficult or more expensive as a result of these business decisions. SBMS has implemented equal access using MTSOs manufactured by AT&T, Motorola, Ericsson and Astronet. SBMS is also installing Northern Telecomm equipment in its West Texas markets and that equipment, too, is equal

access capable. Both small and large switches manufactured by these companies have been used to provide equal access in SBMS markets.

While the Commission is correct that Type 2 interconnection is needed to provide access tandem interconnection, the CMRS provider also has the option to permit the interexchange carrier to direct connect to its switch with different facilities (such as DS-1). SBMS presents this choice of direct connection or interconnection at the tandem to all interexchange carriers within its markets. Therefore, the Commission correctly concludes equal access interconnection can be feasible for most calls with appropriate upgrades at the MTSO.

Centel is also correct that, today, it is technically impossible for there to be equal access call hand-off, in Situation A, as pointed out by multiple industry experts who filed affidavits in the hand-off waiver proceeding.[118] But again, even where equal access roaming is possible (Situation B, C, D in Centel's example) MCI, the author of the proposal, chooses not to participate. Therefore, SBC agrees with the exclusion of the equal access obligation proposed by Centel for these roaming scenarios, if equal access is otherwise imposed.[119] This situation may change with the continued progression of technology. SBC also maintains that equal access should not apply to packet switched data transmission using least-cost routing methodology, due to technical constraints or to the Advanced Intelligent Networks or to another non-voice services.[120] SBC's position is consistent with the Department's position in

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[118] NPRM at ¶ 73.

[119] NPRM at ¶ 74.

[120] See affidavit of Ken Corcoran at Tab 8.

the AT&T/McCaw Consent Decree which exempts CDPD and non-voice wireless services from equal access, and the position taken by the drafters of Senate Bill 1822.[121]

2. Terms and Conditions

SBC agrees that interexchange carriers should be required to choose between direct connection or tandem interconnection with equal access obligated carriers. SBC also agrees with the conditions the Commission states in order to promote fair competition.[122] The rules that have governed the RBOCs and that will apply to AT&T and McCaw are sufficient to ensure that these provisions are followed. These rules should specify cost recovery from the interexchange carriers. It has been the experience of SBMS, that without these requirements, some interexchange carriers may accumulate massive equal access conversion expenses and refuse to pay even though the whole purpose of equal access is to benefit the interexchange carrier, and is being imposed as a product of the interexchange carriers' insistence.

It makes no sense to spread these costs to the individual cellular customer. To make the individual cellular customer pay for the interconnection of the interexchange carrier who will then charge that customer anti-competitive[123] rates is beyond reason. Historically, the RBOCs have recovered these equal access expenses from the interexchange carriers, and there is nothing unique about wireless service to suggest this is the wrong approach.

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[121] See Consent Decree, AT&T/McCaw; also see Senate Bill 1822, draft dated August 11, 1994.

[122] see NPRM at paragraph 79; for instance, interconnection by interexchange carriers with CMRS providers on the same terms and conditions as interexchange services provided by the CMRS provider itself.

[123] Supra at Section III D. 1.

The only way 10XXX could be viewed as a displacement of equal access would be if all CMRS providers were permitted to use 10XXX in lieu of equal access 1+ interconnection as its exists today in equal access cellular markets. However, permitting some CMRS providers to rely on 10XXX as the sole form of equal access, while others have to provide full interconnection and 1+ dialing is inconsistent. Therefore, the RBOC-affiliated cellular carriers should be permitted to alter the way in which they provide equal access today to provide only 10XXX, if they so desired, and the Commission should support this effort, if it permits 10XXX in lieu of equal access 1+ interconnection.

3. Presubscription, Balloting and Allocation

If the Commission is of the opinion that the principle of regulatory parity requires equal access, then it should also impose the same presubscription and balloting rules on cellular carriers and CMRS providers as are currently imposed on landline companies, BOC owned cellular companies and AT&T/McCaw.[124] The Commission should however give CMRS providers the freedom to determine the best method for verifying PIC changes. CMRS providers may not have the resources a local exchange carrier may have nor the volume of primary interexchange carrier ("PIC") changes due to lesser numbers of customers, and thus some flexibility should be given in how the provider coordinates PIC change orders with its customers. For example, the system Southwestern Bell Mobile Systems has instituted for customers wishing to change their PIC has resulted in avoidance of the problems landline

[124] In the Matter of Investigation of Access and Divestiture Related Tariffs, CC Docket 83-1145, Phase I, 101 FCC 2d 911 (1985). (Allocation Order).

company customers have experienced in regards to unauthorized PIC changes or "slamming".[125] SBMS allows customers the freedom to change their PICs by phone or in person. If a carrier wishes to initiate a PIC change it can only do so by placing a call to the cellular carrier with the customer on the line or instruct the customer to call the cellular carrier. Such a method assures that the customer understands that the PIC is being changed and avoids the confusion associated with letters of authorization to change PICs. Thus, the procedures governing changes in PICs that currently apply to local exchange carriers and IXCs should not automatically be made applicable to CMRS providers.[126]

The Commission questions whether allocation is necessary for those who do not choose an interexchange carrier through the balloting process. The Commission should continue to allocate such customers in the proportion as the IXCs that customers selected through their ballots. Allocating customers removes any allegation of an incentive to manipulate the mailing or receipt of the ballots and prevents carriers from gaining customers based solely on the fact that they are participating. Allocating customers in proportion to the IXC selection process is also consistent with the agreement reached between the Department of Justice, AT&T and McCaw in the proposed AT&T/McCaw Consent Decree.

SBC agrees with those commenters who note that if joint marketing rules are to be established to prevent CMRS providers from steering customers to their own long distance

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[125] "Slamming" is the practice of an interexchange carrier submitting an unauthorized PIC change on behalf of a customer.

[126] See, Policies and Rules Concerning Changing Long Distance Carriers, CC Docket 91-64, 7 FCC Rcd 1083 (1992). (PIC Verification Order).

providers, such rules need to be uniform.[127] Uniform rules are especially important given the AT&T/McCaw Cellular alliance. For example, in the AT&T/McCaw Consent Decree, AT&T & McCaw commit to administering the IXC carrier selection procedures on a carrier-neutral and non-discriminatory basis.[128] The Department of Justice has advocated that to prevent steering of customers to a wireless carrier's long distance service the person selling the cellular service should only provide the customer with a ballot to select an interexchange carrier and should not be allowed to sell long distance or advocate that the customer purchase long distance from the wireless providers' long distance service.[129] If the Commission is going to adopt specific procedures to be followed regarding how to handle customer questions or indecision, such procedures should be uniform for all CMRS providers and promulgated through a rulemaking process.

SBC also agrees that if a CMRS provider discloses its customer lists, including names, addresses and mobile numbers to its interexchange service marketing personnel then the same information must be given to unaffiliated interexchange carriers.[130] Whether the CMRS provider wants to disclose such information however should be left to the CMRS provider--disclosure should not be mandated. Thus, if the CMRS provider does not share such

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[127] See NPRM/NOI at p. 89.

[128] AT&T/McCaw Consent Decree, IV, B.1.

[129] Memorandum Of the United States in Response to the Bell Companies Motion for Generic Relief, p. 39, United States of America v. Western Electric and American Telephone and Telegraph Company, Civil Action 82-0192 (D.C.D. 1982).

[130] The interexchange service personnel would, of course, like any other interexchange carrier receive such information for the customers who had chosen them as their PIC.

customer lists with its interexchange service marketing personnel it should not have to provide the lists to any other interexchange service provider.

4. Cost Recovery

The Commission is correct in its tentative conclusion that CMRS providers should be able to recover their costs of equal access conversion.[131] The costs should be assessed against all participating IXCs. As discussed above, it makes no sense to spread the costs to the individual cellular customer.[132] Placing the costs with the IXCs who benefit commercially from the interconnection is consistent with the Commission's cost causative principles. Placing the cost on the IXC instead of the end user also protects established non-equal access CMRS providers from the discriminatory effect of the costs associated with having to convert an existing system and customer base to equal access. Thus, the Commission should acknowledge that CMRS providers are entitled to recover their reasonable costs of conversion from the participating IXCs.

IV. RESALE OBLIGATIONS

A. All CMRS Providers Should be Subject to the Same Resale Obligations.

The Commission requests comments on whether the resale obligations applicable to cellular carriers should apply to all CMRS providers.[133] The same rationale which supported the extension of resale obligations to cellular carriers in 1981 supports the application to all

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[131] NPRM/NOI at p. 40.

[132] See Section III, G. 2.

[133] NPRM/NOI at pp. 59-60.

CMRS providers. Application of the resale obligations to all CMRS providers is also consistent with the regulatory parity goal of Congress and the Commission.

When considering imposing resale obligations for cellular carriers the Commission noted that resale would provide consumers with additional choices in equipment and service packages and afford entrepreneurs an opportunity to engage in various aspects of cellular service.[134] The Commission now acknowledges that a strong resale market fostered competition in the cellular market.[135] Applying the resale obligations to all CMRS providers will likewise foster competition in the CMRS market by encouraging the participation by more entrepreneurs, thus creating more alternatives for the consumer. Applying the resale obligations to all CMRS providers thus furthers the Commission's goal of fostering growth and competition in the mobile market place and its goal of regulatory parity. Developing a separate set of resale obligations for CMRS providers is unnecessary because the Commission is obviously satisfied that the current cellular resale obligations accomplish their purpose. Thus, the resale obligations previously applied to cellular providers should be applicable to all CMRS providers.

The Commission questions whether "unique features" of specific services might support retaining the resale obligations only for cellular carriers.[136] Retaining the obligations only for cellular would create the worst possible result--both for the public and the cellular

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[134] In the Matter of an Inquiry into the Use of the Bands 825-845 Mhz and 870-890 Mhz for Cellular Communications Systems; and Amendment of Parts 2 and 22 of the Commission's Rules Relative to Cellular Communications Carriers, Notice of Inquiry/ Notice of Proposed Rulemaking, 78 FCC 2d 984, para. 36 (1980). (Cellular Resale NOI/NPRM).

[135] NPRM/NOI at p. 59.

[136] NPRM/NOI at p. 59.

carriers. The public would be cheated of the options and alternatives which the resale obligations create. Further, if the differences in cellular and PCS serving areas continue, the cellular carriers will be at an distinct disadvantage. PCS providers will be able to develop extremely large service areas both by the terms of their license authority and ability to resell cellular, and will be able to protect such status by refusing to allow anyone else to resell its service. Applying resale obligations only on a select class of similar competitors is repugnant to the concept of regulatory parity and fair competition.

B. The Market, Not the Commission, Should Decide Which Services Are Likely to Develop a Resale Industry.

The Commission seeks comments "identifying CMRS services in which a resale market is likely to develop, such as wide area SMR and PCS".[137] Instead of trying to identify which services will attract entrepreneurs wishing to resell the service the better way to proceed would be to allow the entrepreneurs to decide. The Commission acknowledged as much regarding cellular resale stating that rather "than make a premature determination regarding resale of cellular systems, we would prefer to let the marketplace decide whether resale is economically viable".[138] An entrepreneur is not going to enter the market as a reseller without the belief that resale is a viable enterprise. The decision of whether it is viable to resell a service should be left with the entrepreneurs--not decided for them by the Commission.[139]

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[137] NPRM/NOI at p. 59.

[138] Cellular Resale NPRM/NOI at ¶ 36.

[139] If a CMRS provider believes that for technical or other reasons its service should not be subject to resale it should seek a waiver and establish why it should be treated differently from other CMRS providers.

C. CMRS Providers Should be Exempt from Reselling to Facilities Based Competitors.

The resale obligations applicable to cellular carriers should be applicable to all CMRS providers. In addition, the exception that a cellular provider is not required to provide resale to a competing facilities based cellular carrier should also be applied to CMRS providers. The resale obligations for cellular were established in 1981 at the time when the industry was in its infancy, only two cities had systems, and the basic licensing structure was being developed.[140] The Commission recognized that since only two licenses were being granted in each service area, it would be in the public interest to allow competing cellular carriers to resell the others' service to stimulate the undeveloped market and protect against one licensee getting a head start in the market. The Commission also recognized however that allowing a facilities based cellular carrier to resell its competitor's service also had negative public impacts, namely that it did not encourage licensees to build out their systems or deploy new technologies.[141] Thus, the Commission determined that resale to a facilities based competitor would only be mandated during the five year fill in period for the cellular carrier requesting resale.[142] In ruling that the resale obligation would not apply to facility based cellular carriers after the five year fill in period the Commission noted that elimination of the obligation after five years from the license grant would promote the maximum amount of competition,

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[140] In the Matter of an Inquiry Into the Use of Bands 825-845 MHz and 870-890 MHz for Cellular Communications Systems, CC Docket 79-318, 86 FCC 2d 469 (1981).

[141] In the Matter of Petitions for Rulemaking Concerning Proposed Changes to the Commission's Cellular Resale Policies, CC Docket 91-33, 6 FCC Rcd. 1719 (1991).

[142] In the Matter of Petitions for Rulemaking Concerning Proposed Changes to the Commission's Cellular Resale Policies, CC Docket 91-33, Report and Order, 7 FCC Rcd 4006 (1992). (Cellular Resale Policy Order).

encourage the build out of systems, encourage the fullest use of the radio spectrum allocated to cellular service and discourage a competitor from permanently relying on it's competitor's facilities.[143] The Commission also noted that continuing to allow competitor resale would discourage investment in new technologies such as digital because a competitor would simply be able to piggy back off the investment.[144]

Thus, as the Commission correctly recognized in 1992, mandating that cellular carriers allow their facilities based competitors to resell their service is contrary to the public interest in a competitive market.[145] Mandating that CMRS providers, including existing cellular carriers, must allow facilities based CMRS providers to resell their service would likewise have a harmful effect on the development of the CMRS market. New facility based CMRS providers need to be encouraged to develop and use the spectrum they have been allocated and build their systems, rather than piggy backing and relying on existing systems. Thus, the Commission should exempt CMRS providers, including cellular providers, from providing resale to facilities-based CMRS competitors, including during the first five years the competitors hold their licenses. Further, the Commission should not adopt further classifications of CMRS providers for resale purposes.[146] If a CMRS provider believes that

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[143] Cellular Resale Policy Order, at ¶¶ 10 - 12.

[144] Id.

[145] See, Id. at ¶14. The Commission noted that once the duopoly market structure has been achieved there is no reason to require one carrier to continue providing resale capacity to the other.

[146] NPRM/NOI at p. 60. The Commission requests comments on whether resale should be mandated except for those CMRS providers having "substantially similar services" with services being substantially similar if they are offered to customers with substantially similar needs and demands.

another CMRS provider is offering a service which does not compete with its service it will enter into such an agreement voluntarily. In addition, the Commission should reject the notion that there must be a "threshold" amount of overlap between competing carriers service area before resale obligations can be restricted.[147] If the service areas are overlapping, then the carriers are competing in that service area and resale should not be required in the overlapping area.

The Commission notes that it must determine whether the resale restriction for facilities-based competitors is just and reasonable under the Sections 201(b) and 202(a) of the Act. The Commission conducted a similar exercise when first adopting the competitor resale restriction a little over two years ago.[148] As the Commission noted in weighing the public benefit versus public burden, unrestricted competitor resale 1)inhibits facilities based competition by encouraging a competitor to rely on its competitors facilities 2) delays the implementation of new technologies and 3) creates the potential for collusion.[149] The Commission also noted that restricting competitor resale promotes the efficient use of the spectrum and stimulates interbrand competition.[150] The same rationale supports the extension of the facilities based resale restriction to all CMRS providers. Further, since the mobile service market is now established, there is no need to apply the 5 year rule, rather the public

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[147] See, Id.

[148] Cellular Resale Policy Order, at ¶¶ 15-16.

[149] Id. at ¶ 15.

[150] Id. at ¶ 16.

is better served by new CMRS entrants being encouraged to put the spectrum they have been allocated to use rather than relying on their competitors' facilities.

D. The Commission Should not Mandate Access to CMRS Providers' Proprietary Databases or Changes to Widely Used Industry Standards.

MCI has requested direct line access to various proprietary databases to gather Home Location Register and Visited Location Register.[151] As SBC set forth in specific detail in its Reply Comments in FCC Docket 93-252, interexchange carriers have been granted a right of interconnection to receive and terminate calls--they do not have a right to obtain proprietary confidential information from carriers.[152] Such information is not needed for the interexchange carrier to carry interexchange traffic. While the information would obviously benefit a joint IXC-CMRS operation, the fact that a competing CMRS provider would like a competitors proprietary information is not reason for the Commission to grant such access. In fact it is a reason to deny such access. As discussed above, the need for such information is especially suspect given the minimal response of interexchange carriers interested in handling equal access for roaming traffic.[153] The Commission should be extremely cautious to grant access to proprietary customer information and require a strong showing. An even stronger showing should be required when the company requesting access is affiliated with a

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[151] The HLR includes various sorts of proprietary customer information including mobile number, electronic serial number, features which the customer has opted to purchase from the mobile system provider, the customer's PIC (if required), whether the customer will accept or pay for out of territory calls and other information. The VLR contains similar information for customers roaming in to a customers market.

[152] Reply Comments of Southwestern Bell Corporation in Docket 93-252, filed November 23, 1993, pp. 9-10.

[153] See, Section III, D. 2.

CMRS provider who may be competing shortly with the CMRS provider whose database will be accessed. One wonders if MCI's position would be the same if AT&T/McCaw were requesting access to a MCI/Nextel databases, had that deal been consummated? MCI's position is especially ironic given the fact that it says it needs access to such information to locate the CMRS provider's customers who have chosen MCI for interexchange service, MCI rejected equal access roaming when it was offered by SBMS. The simple fact remains, access to the databases and the other information MCI is requesting is not required for MCI to provide interexchange service to the CMRS provider's customer.

The Commission also requests comments on whether Commission policy should require some or all CMRS providers to allow other CMRS provider's customers to use their system on a roaming basis and whether it should require a technical compatibility of equipment. Commission mandates and regulation are not required in this area because economic forces alone will spur the growth of the CMRS roaming markets. CMRS providers have an economic interest in selling service to roamers in their market and selling the ability to roam to their customers. Requiring all CMRS carriers to accept roaming customers of all CMRS providers is unnecessary. As occurred in cellular, CMRS providers should have the freedom to negotiate mutual roaming agreements with CMRS providers where it makes economic and technical sense for both parties. Allowing CMRS providers to negotiate with similar CMRS providers spurs competition by allowing the providers to strike the best business deal it can in a market for the handling of roaming traffic, which benefits consumers in the form of better roaming rates.

The Commission should also refrain from dictating any type of new industry standard for technical compatibility for roaming purposes.[154] There is an established standard in the industry today as evidenced by the widespread roaming use of cellular telephones today. As cellular has proven, there is no need for Commission mandated technical compatibility. Through the development of IS-41 standards service providers are able to choose any vendor for construction of their network with the assurance that the vendor's equipment will communicate with neighboring systems and distant system utilizing the IS-41 standards. These standards were developed by the entire industry, including service providers, switch vendors and access equipment manufacturers. New CMRS providers can simply build on the standards and structure which is in place as a result of the mobile communication industry working together over the last ten years. A new entrant into a market should not be able to dictate that the market change its standards to meet the new entrant's needs. The new entrant should meet the industry established standard. Thus, market forces are adequate to ensure that the industry continues to work together on roaming compatibility--regulatory intervention is not warranted.

V. INTERCONNECTION

A. Interconnection Requirements of Local Exchange Carriers

The Commission currently requires interconnection between LECs and CMRS providers based on reasonable charges with mutual compensation for terminating traffic.[155]

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[154] NPRM/NOI at p. 59.

[155] NPRM/NOI at pp. 45-46.

The Commission has not required tariffs for CMRS-LEC interconnection and thus interconnection has been through negotiated agreements or state tariffs. The Commission requests comments on whether it should now mandate the filing of LEC-CMRS tariffs because of concerns about the lack of negotiating power of new market entrants. All CMRS providers, including new market entrants, would be better served by the Commission adopting its proposed negotiation safeguards and allowing LEC-CMRS interconnection to continue via negotiated agreement rather than tariff.

Cellular carriers are generally satisfied with the general system of negotiated agreements.[156] As noted by the Commission, while various commenters in the CMRS proceeding raised concerns that new entrants would not have adequate bargaining power to obtain fair and reasonable interconnection arrangements through negotiation, few commenters embraced tariffing as a solution.[157]

In fact, tariffing is not the solution. As the Commission acknowledges, a tariffing requirement does not provide the flexibility for crafting different options to meet the needs of different carriers and could impose additional administrative costs on the LEC--which costs would likely be passed on through higher rates.[158] The need for flexibility will become increasingly important with the introduction of not just new entrants, but new and differing technologies and needs.

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[156] See, NPRM/NOI at p. 48.

[157] NPRM/NOI at p. 47.

[158] NPRM/NOI at p. 49.

The Commission notes the tariffing process provides an established means for ensuring that rates, terms and conditions are reasonable and that carriers do not engage in unreasonable discrimination.[159] The same assurances are gained through the Commission's proposed negotiation safeguards. Under the safeguards, LECs would be obligated to include a clause guaranteeing that the most favorable terms, conditions, and rates provided by the LEC to one carrier will be provided to all.[160] Further, LECs would be required to make all interconnection agreements available for public inspection so that terms and conditions may be compared.[161] By adding these safeguards the Commission would be assuring nondiscrimination and fair treatment while at the same time avoiding the inflexibility and cost associated with the tariffing process. Thus, all CMRS providers, including new entrants, would be better served by the Commission simply revising the current negotiation requirements to assure non-discriminatory treatment rather than by mandating interstate tariffing requirements.

The Commission also requests comments on whether proceeding by negotiated agreement rather than a tariff would be in the public interest given the effect of "inconsistencies in interconnection policies" and possible delay in negotiations. As noted by the cellular providers the effect of "inconsistencies in interconnection policies" has been (1) lower rates and (2) more rapid and efficient deployment of constantly evolving services

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[159] Id.

[160] NPRM/NOI at p. 50.

[161] The NPRM/NOI suggests that all contracts be filed at the Commission. A better alternative might be to file the contracts locally, near the particular market area, with the state regulatory agency.

because of the flexibility provided by tailoring specific interconnection needs.[162] Further, there should be little delay in negotiating agreements because the current cellular carrier interconnection agreements are available as examples. Thus, continuing to allow interconnection by negotiated agreement benefits the public by allowing for more rapid deployment of new services while not inflating the cost with unnecessary regulatory requirements.

Although federal tariffs should not be mandated for interstate portions of CMRS interconnection, the Commission must also decide whether changes should be made as to how those LECs with negotiated agreements which have been incorporated into tariffs should handle the interstate portion of CMRS interconnection. The Commission has preempted state regulation over the physical facilities but declined to preempt state regulation of rates.[163] To require an entire separate agreement to be negotiated for interstate interconnection would be duplicative. Rather, the parties should be allowed to negotiate any applicable interstate interconnection rate and rely on the terms of the established state tariff. Negotiation of any applicable interstate interconnection rate should not be burdensome as the Commission has already recognized that when a wireless carrier is acting as an interstate interexchange carrier in "offering interstate, interexchange service, the local telephone company providing

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[162] NPRM/NOI at 49.

[163] See, NPRM/NOI at pp. 44-45.

interconnection is providing exchange access to an interexchange carrier and may be expected to be paid the appropriate access charge."[164]

B. Interconnection Between CMRS Providers

1. Interconnection Between CMRS Providers Should Be Allowed, But Not Mandatory.

The Commission seeks comments on various issues regarding mandated interconnection between CMRS providers, beginning with the threshold question of whether there is even a need to impose mandate interconnection obligations between CMRS providers. The answer is NO. As Commissioner Barrett notes "where there is no issue of interconnection to bottleneck facilities", there should be "a higher burden to meet to justify such regulatory requirements between CMRS providers".[165] The imposition of mandatory interconnection between CMRS providers is simply not justified.

For the CMRS market to flourish what is needed is freedom not mandates. The way to attract and retain qualified providers in a competitive CMRS market is to assure the providers that they can control their destiny to the largest extent possible--not to require them to engineer their systems to interconnect with every competitor who requests interconnection. CMRS interconnection is not required for a CMRS provider to be in business -- what is required is interconnection to the public switched network. As the attached diagrams indicate, mandated CMRS interconnection does not gain a CMRS provider's customers access to any

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[164] In the Matter of the Need to Promote Competition and Efficient Use of Spectrum for Radio Common Carrier Services, 59 Rad. Reg. 2d 1275, Appendix B, FCC Policy Statement on Interconnection of Cellular Systems, Note 3 (1986).

[165] See separate statement of Commissioner Andrew C. Barrett, NPRM/NOI.

greater number of customers--it merely results in inefficient deployment of facilities.[166] The Commission states that they do not want to "encourage a situation where most traffic from one CMRS provider must pass through a LEC switch for its traffic to reach a subscriber of another CMRS service, if such routing would be inefficient or unduly costly".[167] Presumably the rates being charged for access and transport on the public switched network will be the same for all CMRS providers and thus no CMRS provider is at a competitive disadvantage. While it may be cheaper for the CMRS provider wanting interconnection, it is obviously costly and inefficient for the other CMRS provider, otherwise the interconnection would not have to be mandated--it would have been voluntary.[168] Mandating CMRS interconnection forces one CMRS provider to engage in activity which it believes is inefficient or unduly costly because if the interconnection were thought to be beneficial it would do so voluntarily. CMRS providers should be given the freedom to interconnect only when both agree that it will be mutually beneficial.

The Commission questions whether there are policy considerations that would warrant imposition of interconnection obligations even in absence of access to bottleneck facilities.[169] Again, the answer is NO. The fact that the Commission must speculate as to whether any policy consideration even exists indicates that it would be premature to impose such an

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[166] See Tab 9.

[167] NPRM/NOI at p. 54.

[168] For example, SBMS and McCaw are negotiating an agreement to direct connect their mobile telephone switching offices in Dallas. Thus, where it makes business sense for both parties, the market will allow CMRS interconnection to happen.

[169] NPRM/NOI at p. 53.